IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.452 OF 2007

Cox & Kings (India) Private Limited.., Petitioners.

Vs

German Ink Production Pvt Ltd, Respondents

WITH

COMPANY PETITION NO.461 OF 2007

Cox & Kings (India) Private Limited Petitioners.

Vs

Vishhudha Rasayanee Pvt Ltd Respondents

Mr Simil Purohit i/b M/s Dhru & Co. for the petitioners.
None for the respondents, though served.

CORAM : D.B.BHOSALE, J.
DATED : 23rd August, 2007.

P.C.:

1. Heard learned counsel for the petitioners. None appears for the respondents, though served.

2. The petitioners in both the company petitions are one and the same. The petitioners are involved in travel related services. A service agreement dated 16.6.2003 was entered into between the petitioners and the respondents-companies, viz. M/s Gandh Sugandh, the division of Vishhudha Rasayanee Pvt Ltd, and German Ink Productions Private Ltd.. The petitioners had agreed to provide and did provide

services for travel related requirement to the respondents-companies. Under the agreement, the petitioners had agreed to submit/raise all bills and invoices and other debit documents for the services rendered to the respondents-companies and in turn they had agreed to make payment as per the schedule provided in the agreement. Accordingly the services were rendered and the bills/invoices were raised to the tune of Rs.5,77,079/- together. It appears that the liability has not been disputed by the respondents-companies which is evident from their reply dated 31.3.2005 annexed to the petition at Exhibit-I. In their reply dated 31.3.2005, they have apologised for the delay in settling the outstanding amount of Rs.5,77,079/- and have further stated they will clear it in instalments. However, the amount was not paid. In view thereof, a notice under sections 433 and 434 of the Companies Act, 1956 was issued on 24.9.2005 on behalf of the petitioners to the respondents-companies at its registered office.Though duly acknowledged, the respondents-companies have not responded to the notice. The company petitions for winding up have been duly served on the companies and the affidavit of service on 16.8.2007 has been filed. There is a debt due and payable in an amount excess of Rs. 500/- and hence the company petitions for winding up

would be maintainable. Since there is no reply by the respondents-companies and they have chosen to remain absent despite service, the Court has to proceed on the basis of the averments contained in the petitions.

3. However, in order to furnish the respondents with an opportunity to avoid the consequences of the admission of the petitions for winding up, it would be appropriate to pass a conditional order permitting the respondents to deposit the principal amount of the invoices. Thereupon, the petitioners would be relegated to the remedy of filing a suit for the recovery of its dues together with interest and the amount so deposited would be credited to the account of the suit. Hence, the following order:

(i) Within a period of 3 months from the date of this order, the respondents shall deposit with the Prothonotary & Senior Master of this Court, the amount of Rs.5,77,079/- in the above petitions;

(ii) The petitioners are at liberty to file a suit for the recovery of the price for travel related services rendered by the

petitioners to the companies. The petitioners would be at liberty to institute a suit for the recovery of its dues within three months of intimation of deposit furnished by counsel for the respondents;

(iii) The amount deposited shall upon the institution of the suit stand transferred to the credit of the account of the suit;

(iv) The amount upon being transferred to the credit of the suit account shall be invested in a fixed deposit of a Nationalised Bank. The petitioners will be at liberty to move the court for directions in regard to the money which is deposited;

(v) In the event, that the Respondents fail to deposit the amount as directed, the company petitions shall stand admitted. The petitioners in Company Petition No.452 of 2007 to advertise the petitions in "Free Press Journal", "Nav Shakti" and also in Maharashtra Government Gazette. The petitioners to deposit Rs.10,000/- with the Prothonotary and Senior Master towards publication charges. The publication of an

advertisement in company petition no.461/07 is dispensed with.

(vi) If no suit is instituted by the petitioners within the period stipulated, the respondents would be at liberty to apply for discharge of the security.

4. The petitioners to communicate this order duly authenticated by the Registry within two weeks from today by registered A/D. The company petitions are accordingly disposed of in the above terms.

(D.B.BHOSALE, J.)